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No. 85-1888

IN THE

# Supreme Court of the United States

October Term, 1985

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NORMAN OWENS, CLOID SHULER, and GORDON FAULKNER,

*Petitioners,*

vs.

RICHARD A. FRENCH, MORRIS E. DOZIER, MARTIN W. BRADBERRY, and HENRY C. JENNINGS, on behalf of themselves and all others similarly situated,

*Respondents.*

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## ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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## RESPONDENTS' BRIEF IN OPPOSITION

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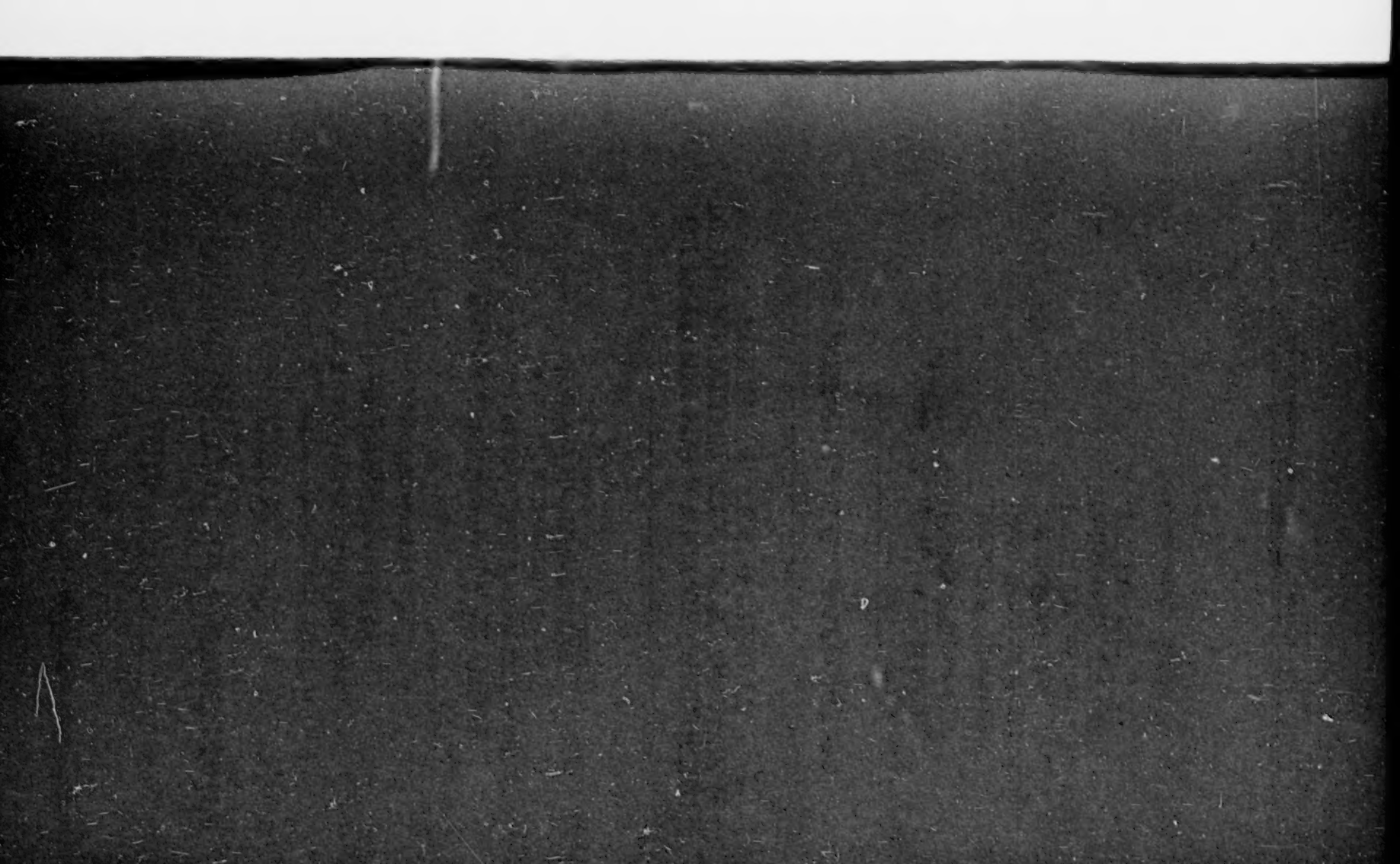

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The respondents Richard A. French, Morris E. Dozier, Martin W. Bradberry, and Henry C. Jennings respectfully request that this Court deny the petition for writ of certiorari, seeking review of the Seventh Circuit's opinion in this case. That opinion is reported at 777 F.2d 1259 (1985).

## STATEMENT OF THE CASE

The Indiana Reformatory is an antiquated, overcrowded, filthy and dangerous prison. There is virtually no element of prison life there that is not fraught with daily risk of disease, mayhem and death. The petitioners' expurgated presentation of the facts misrepresents the prison conditions as found by the district court. Indeed, a comparison of the petitioners' quotations from the district court's opinions and the opinions themselves discloses that petitioners have deliberately quoted only those portions of the district court's findings that are not critical of conditions at the prison. Every one of the extensive passages from the district court's opinions lambasting conditions has been excised from the petitioners' presentation of the facts. Respondents will not burden this brief with a detailed restatement of those deleted facts. They are readily apparent from even a hasty reading of the opinions. The court of appeals accepted District Judge Dillin's opinion as "an excellent and thorough description of conditions at [the Indiana Reformatory]." Appendix to Petition for Writ of Certiorari at A-3 n. 1.

The petition must be considered, not in the context of the fairy tale prison petitioners describe, but in light of the real conditions described by the district court and thoroughly supported throughout 3,798 pages of transcript and 462 exhibits. In addition, the district court assessment of conditions is entitled to even greater than ordinary deference, since the district judge personally visited the prison and conducted a thorough tour of the facility. This Court, on the basis of a written record, can never be in a position to develop an intimate understanding of the prison conditions equal to that of the district court. It is not appropriate that this Court grant review in a case where the impressions of the trier of fact, based upon massive amounts of evidence, are so central to an accurate understanding of the case.

## REASONS WHY THE PETITION SHOULD BE DENIED

### 1. THE LAW IS WELL SETTLED AND THE LOWER COURTS PROPERLY APPLIED THE LAW TO THE CONDITIONS OF CONFINEMENT AT THE INDIANA REFORMATORY.

#### A. The Lower Federal Courts Properly Concluded That The Conditions Of Confinement Constitute Cruel And Unusual Punishment.

The present case is a routine prison conditions case which, like so many prison conditions cases, has been in litigation in the lower federal courts for a decade. The case is legally identical to cases in at least half the states,[1] but each case is factually unique.[2]

When persons incarcerated in a state penal facility claim that the conditions of their confinement constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States, identification of the controlling legal principles is not difficult, but application of those principles to the complex environment of a prison requires wisdom, perseverence, and courage by the district court judge.

This Court has unambiguously delineated the standards to be used by the district court judge in adjudicating the

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[1] Justice Brennan lists cases from 24 states, not including Indiana, in which "prisons or prison systems have been put under court order because of conditions of confinement challenged under the Eighth and Fourteenth Amendments." *Rhodes v. Chapman*, 452 U.S. 337, 353 n. 1 (1981).

[2] The petition for writ of certiorari is just plain wrong when it states that there is a "virtual identity of facts" between this case and *Smith v. Fairman*, 690 F.2d 122 (7th Cir. 1982), *cert. denied*, 461 U.S. 946 (1984). Petition for Writ of Certiorari at 20. No two prisons are virtually identical. The substantial number of factors which must be evaluated to determine whether persons are being deprived of a "minimal civilized measure of life's necessities" make factual comparisons almost impossible. The court of appeals explicitly distinguished *Smith v. Fairman* on the facts. *See* Appendix to Petition for Writ of Certiorari at A-5.

Eighth and Fourteenth Amendment claims. Throughout its history this Court has set the constitutonal limit on methods of punishment by defining "cruel and unusual." In setting this standard, the Court strives to "draw its [cruel and unusual] meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1957).

The federal judiciary has only recently recognized that the environment in many of America's prisons is so painful, unhealthy and dangerous that it is constitutionally impermissible to house human beings in them. Until about 1970, the shroud of federalism shielded those intolerable institutions from the view of the federal judiciary which kept its "hands off."

During the first decade after the abolition of the hands off doctrine, this Court put its imprimatur on the process of requiring state officials to recognize the limitations of the Eighth Amendment. *Hutto v. Finney*, 437 U.S. 678 (1978). It was more than ten years after the abandonment of the hands off doctrine before the Court comprehensively defined the standard for evaluating cruel and unusual punishment as it applies to overall prison conditions.

Only five years ago this Court fulfilled its essential function when it set the standard for cruel and unusual punishment in *Rhodes v. Chapman*, 452 U.S. 337 (1981). The petition for writ of certiorari herein does not assert that the *Rhodes v. Chapman* standard should be changed, and it is much too soon for the Court to reevaluate this rule. Prisoners and prison officials alike are entitled to the predictability of a stable rule.

The district court intensely studed the conditions at the Indiana Reformatory and adjudicated those facts under the *Rhodes v. Chapman* standard. Appendix to Petition for Writ of Certiorari at A-24 through A-25. The United States Court of Appeals for the Seventh Circuit applied the *Rhodes v. Chapman* standard in reviewing the judgment.

*Id.* at A-4 through A-5. Now the petitioners want another review from this Court on the basis of their bald, unsubstantiated claim that the lower courts have not followed *Rhodes v. Chapman.*

The petition focuses on the "infliction of pain" language from *Rhodes v. Chapman.* This emphasis on pain distorts the rule, which makes clear that deprivation of basic human needs constitutes cruel and unusual punishment. In *Rhodes v. Chapman,* the Court said,

> In *Hutto* [*v. Finney,* 437 U.S. 678 (1978)], the conditions of confinement in two Arkansas prisons constituted cruel and unusual punishment because they resulted in unquestioned and serious deprivation of basic human needs. Conditions other than those in [*Estelle v.*] *Gamble* and *Hutto,* alone or in combination, may deprive inmates of the minimal civilized measure of life's necessities. Such conditions could be cruel and unusual under the contemporary standard of decency that we recognized in *Gamble.* 429 U.S. at 103-104.

452 U.S. at 347.

The emphasis on pain in the petition makes the Eighth Amendment sound like a mere proscription of corporal punishment. The Indiana officials do not contend that Judge Dillin was clearly erroneous, or even that he was wrong, when he held that the environmental conditions at the Indiana Reformatory are "deplorable" and "fail to meet contemporary standards of decency." Appendix to Petition for Writ of Certiorari at A-4 and A-32. Their only complaints are that the findings are not tied to overcrowding[3]

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[3] The district court made the following findings:

> In addition to the infestation of the kitchen and food storage areas, the dormitories and one cellblock are infested with birds, flies, and other insects in warm months. Plumbing chases were found to be dirty and ideal for harboring insects and rodents. Lack of hot water in the cells, inadequate ventilation, and unsanitary toilets, showers, and lavatories encourage the spread of communicable diseases and

(Footnote continuted on next page)

and public health standards are irrelevant.[4]

Only five years ago, the State of Indiana implored this Court to adopt precisely the rule it adopted in *Rhodes v. Chapman*. In an amicus curiae brief, presented to the Court by Indiana and twenty-nine other states, the following definition of pain was presented:

> "If the State furnishes its prisoners with reasonably adequate food, clothing, shelter, sanitation, medical care and personal safety, so as to avoid the imposition of cruel and unusual punishment, that ends its obligations under Amendment Eight." *Newman v. Alabama*, 559 F.2d 283, 291 (5th Cir. 1977).
>
> Denial of any of the items catalogued in *Newman* causes identifiable, quantifiable, physical pain. Although a judgment as to whether such pain is "cruel and unusual" focuses on one's mental state, it is specific and objectively measurable. It can therefore be subjected to meaningful review and it can be implemented by specific remedies.

Amicus Curiae Brief of States of Alaska, et. al. at 17 in *Rhodes v. Chapman*, No. 80-332. The rule proposed by the State of Indiana was adopted by this Court in *Rhodes v. Chapman* and applied by the district court and court of appeals in the present case.

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(Footnote continued from previous page)

> pose additional serious public health threats. Inadequate lighting, especially on the administrative segregation unit, causes eyestrain, hinders sanitation efforts and smacks of unjustified punitive action. These conditions, *exacerbated by overcrowding* and inadequate opportunities for activity outside the cell or dormitory, fail to meet contemporary standards of decency and impose unnecessary and wanton pain upon the inmates.
>
> Appendix to Petition for Writ of Certiorai at A-31 through A-32 (emphasis supplied).

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[4] This Court, of course, recognizes that public health standards are constitutionally relevant, not controlling, but relevant. *See Rhodes v. Chapman*, 452 U.S. 337, 364 n. 12 (Brennan, J., concurring).

Any narrower interpretation of cruel and unsual punishment would not conform to contemporary standards of human decency. If a state chooses to deprive an individual of his liberty, for whatever reason, surely the state is obligated to provide the individual at least a "minimal civilized measure of life's necessities." The prisoners at the Indiana Reformatory are not seeking a rose garden and the district court has not promised them one. All they are seeking is to be treated like human beings.

### B. The Lower Federal Courts Applied The Correct Rules Of Law In Formulating A Remedy.

Once the district court held the conditions of confinement to be in contravention of the Eighth and Fourteenth Amendments, the court became obligated to formulate a remedy which would eliminate the unconstitutional conditions — a remedy which "promises realistically to work." *Green v. County School Board*, 391 U.S. 430, 439 (1968). Since all of the myriad factors which comprise the equation used in determining whether the inmates are being provided a "minimal civilized measure of life's necessities" must also be considered in formulating a remedy, the process is necessarily complex with no obvious solution. "In fashioning and effectuating the decree, the courts will be guided by equitable principles." *Brown v. Board of Education*, 349 U.S. 294, 300 (1955).

The court has "ample authority to ... address each element contributing to the violation." *Hutto v. Finney*, 437 U.S. 678, 687 (1978). "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15 (1971).[5]

[5] These school desegregation cases apply to the present case. In *Swann*, the Court said, "a school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of a constitutional right." 402 U.S. at 15-16.

The petitioners would have the Court alter this philosophy by imposing a rigid, purposeless prohibition against "double remedies" on the judicial equity power. This proposal would apparently limit the district court to one kind of remedy, i.e., the court could order a reduction in the population or require improvements in the environment, but not both. Obviously no authority is cited in support of this sophomoric proposal, nor is any rationale apparent. A quick review of the broad remedies approved by this Court in *Brown*, *Green*, *Swann*, and *Hutto*, demonstrates the absurdity of this position.

It is far from clear that this proposed principle would serve the interests of the petitioners. If hamstrung by such a rigid, simplistic remedial rule, the injunction would likely have been less palatable to the petitioners. An order closing the Indiana Reformatory is certainly supported by the record and the unitary remedy of closure is the ultimate equitable power of the district court. Surely a less intrusive remedy is not objectionable just because a combination of approaches are used.

Resolution of any complex problem requires the use of a variety of elements in the solution, and a prison conditions case is no exception. The constitutional mimima can be identified only by taking into account the number of prisoners, the physical plant, the personnel, and the way management blends these three ingredients. It would be foolhardy to attempt to eliminate unconstitutional conditions by focusing only on one of these four factors. "Flexibility rather than rigidity has distinguished [equity jurisdiction]." *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944).

The petitioners also advocate an absolute requirement that the prison officials are entitled to "suggest or choose a remedy." Petition for Writ of Certiorari at 21. The only authority cited for this radical proposition is *Jones v. North Carolina Prisoners' Union*, 433 U.S. 119 (1977). In *Jones*, the Court held no constitutional violation had been shown by the prisoners so there is no holding relating to remedy.

Permitting, or requiring, prison officials to propose a remedy is certainly a useful technique which the district court used extensively. *See* Amended Order paragraphs 6,7,8,9,12,13, and 15; Appendix to Petition for Writ of Certiorari at A-37 through A-40. There is no rationale, however, for making this technique mandatory. In some areas it would be a meaningless, time-consuming gesture.

The district court and court of appeals recognized the well established rule that the remedy must be the "least intrusive method necessary to eliminate unconstitutional conditions." Petition for Writ of Certiorari at 22. The district court explicitly recognized this principle in formulating the amended remedy in 1984. In his memorandum, Judge Dillin said, "The Court recognizes that since the 1982 order, substantial progress has been made toward correcting the unconstitutional conditions and that the improvements must be considered in fashioning an appropriate remedy." Appendix to Petition for Writ of Certiorari at A-34. The Court should grant review on this issue only if the Court is inclined to announce a rule that the district court is obligated to use magic words, such as "least intrusive remedy," in every opinion.

The court of appeals in this case performed the same function as did the courts of appeal in the third, fifth and ninth circuit cases[6] cited in the petition for writ of certiorari. The court of appeals reviewed precisely the same claims of overbroad remedy asserted herein, vacated some aspects of the remedy and upheld others. Both lower courts conscientiously endeavored to formulate the least intrusive remedy which would work to eliminate the unconstitutional conditions.

The remedy in this case easily satisfies the three principles of *Milliken v. Bradley*, 433 U.S. 267, 280-81

[6] *Union County Jail Inmates v. DiBuono*, 713 F.2d 984 (3rd Cir. 1983), *cert. denied*, 465 U.S. 1102 (1984); *Ruiz v. Estelle*, 579 F.2d 1115 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983); *Wright v. Rushen*, 642 F.2d 1129 (9th Cir. 1981).

(1977). The nature of the remedy responds to the nature and scope of the constitutional violation; the decree is remedial in nature; and the judgment takes into account the interests of state and local authorities. No plausible reason is presented as to why this Court should review the remedy.

## 2. The Injunction Restricting The Use Of Mechanical Restraints Is A Proper Application Of The Eighth Amendment, Is Consistent With Other Cases, And Does Not Raise An Issue Of Importance For Other Prisons In The Country.

Before their use was enjoined, steel shackles were used routinely to restrain prisoners to their beds, most frequently in the most secure unit at the Reformatory, the Maximum Restraint Unit ("MRU"). Prisoners were often restrained wearing little or no clothing and were not released to go to the bathroom. Reasons for chaining prisoners varied from being disruptive to making suicide gestures. A description of this practice will reveal how malignant and inhumane it was and will show why detailed regulation of the practice in the form of an injunction was necessary.

From January 17, 1980 until January 9, 1982, there were 84 separate, documented instances of the use of mechanical restraints on the MRU. Plaintiffs' Exhibit 81(1982). The MRU log book documented the use of mechanical restraints on inmates for periods of time as long as a day and one-half, two days, and two and one-half days. Instances of the use of mechanical restraints in the MRU for periods of time between twelve and twenty-four hours were commonplace. Plaintiffs' Exhibit 81(1982). The most common method of restraining prisoners in the MRU was to chain them, spread-eagle, to the bed, with each limb secured by metal cuffs to each of the four bed legs.

Michael Dixon was taken to the Indiana Reformatory from the Vigo County Jail after he attempted suicide by

hanging himself at the jail. He was placed in the restraint unit in the infirmary building upon arrival. After attempting unsuccessfully to get medical attention for his "nerves," he finally made a second suicide attempt by cutting himself in two or three places with a razor blade. This happened between 2:00 and 3:00 in the afternoon. He was immediately chained to his bed, hands secured above his head, and feet to the foot of the bed, with only superficial medical attention. He remained this way until 10:00 or 10:30 that evening, when a custody officer brought him a sack lunch to eat. It was discovered that his wounds had come unbandaged and blood was running on the floor. He finally received medical attention for his wounds at that time. He was chained again in a similar fashion until 8:30 or 9:00 the next morning. During the time Mr. Dixon was restrained, he was wearing only shorts. He had to urinate on himself and on the floor while restrained. He only saw Dr. Perry, the staff psychologist, twice during his ordeal — once when he first cut himself and again when he was released some eighteen hours later. He never saw a psychiatrist. Tr. 17-99 through 17-112.

William Baxter was mechanically restrained twice in the MRU. Both times, he was chained spread-eagle to his bed, once for eight hours and three days later for one and one-half hours, both times for attempting suicide by cutting himself. Tr. 17-115 through 17-119.

The following month, Mr. Baxter was mechanically restrained in the infirmary restraint unit. This time, after getting in an altercation with another inmate and setting his mattress on fire, he was placed in mechanical restraints by ten officers. There was no bed frame in Mr. Baxter's cell, so he had his wrists attached to his ankles behind his back with hard, steel shackles. After being restrained in this fashion, he was kicked twice in the eye by one of the officers. He was held in this manner for eight hours. When he was released, he was taken to the infirmary emergency room because his hands were very swollen and numb and he

could not move them. After an unsuccessful attempt to reduce the swelling at the emergency room, he was placed in the MRU and placed in handcuffs for another five hours. Tr. 17-119 through 17-123.

Dr. Frank Rundle, an expert witness in psychiatry, retained by the United States as amicus curiae, examined Mr. Baxter and found that there was damage to the nerves of one hand as a result of the extreme pressure exerted when he was cuffed, wrists to ankles, behind his back. Dr. Rundle described this method as "extraordinarily ... cruel." Tr. 18-116. Also, Dr. Rundle, after having examined Mr. Baxter, concluded that he was psychotic and should not have been in a prison, but in a psychiatric hospital. Tr. 18-130.

Jerry Ellis was mechanically restrained three times in the MRU within a period of two months. He was chained in spread-eagle fashion to his bed, twice on his back and once on his stomach, for periods of twenty-one and one-half, nineteen, and almost twenty-four hours. In each instance, the reason for applying the shackles was disruptive conduct: flooding his cell with water, breaking a lightbulb and cursing the MRU officers, and throwing coffee at an officer. During each restraint period, he was allowed only one opportunity to eat by releasing one arm and placing the food tray on his chest. However, he was unable to eat in this position. During one of the periods of restraint, he was required to spend the first fifteen hours nude, after being restrained while still wet from a shower. He was then allowed to put on a pair of undershorts. Tr. 17-13 through 17-27.

Melvin Hardy was mechanically restrained four times in the MRU. The second time, he was stripped naked and chained to his bed on his back, spread-eagle, for creating a disturbance and flooding his cell with water. The mattress and sheets were removed from his bed, so he was lying on a flat, solid plate of steel. Mr. Hardy stayed in this position

for eighteen hours, according to the log book, but he believes it was for longer than that. He was not even allowed to get up to go to the bathroom and so had to turn and urinate on the floor and partially on his bed. It was not until twelve hours after being restrained that an officer brought Mr. Hardy a sheet to cover-up with and released one arm for him to eat. Tr. 17-34 through 17-38. Each time he was restrained for creating a disturbance. One time he was restrained in wet clothing for two hours. Tr. 17-38 through 17-41.

On his tour of the infirmary restraint area in the infirmary building, Dr. Ronald Shansky, an expert witness in medicine, retained by the United States as amicus, observed an inmate Fullmer chained spread-eagle to his bed on his back. One arm was bandaged, and he was told that Mr. Fulmer had attempted suicide. Tr. 17-82. Dr. Rundle examined Mr. Fulmer's medical records and concluded that he had been in and out of restraints for a period of from thirty-six to forty-six hours. Tr. 18-131. During this time, Mr. Fulmer was not released to go to the bathroom and so he urinated against the wall of his cell. During the night, he lay and moaned and asked to speak to someone, but no one responded. Tr. 19-18 through 19-22.

Dr. Rundle examined Mr. Fulmer and found that he was seriously psychotic, although not likely to become combative, and that he should not have been in a prison, but should have been in a hospital. According to Dr. Rundle, the use of restraints on Mr. Fulmer was not appropriate for any reason. Tr. 18-131.

Many other examples of the use of mechanical restraints are documented in the MRU log book. The log book shows the following entry while Inmate Holliday was restrained: "Told Holliday to stop rattling his chains, or he would be stretch [sic] out good." Plaintiffs' Exhibit 81A(1982) at Tab 20. This log book entry is reflective of the abusive philosophy underlying the use of mechanical restraints on prisoners at the Reformatory.

Inmate Simpson was chained to his bed with no mattress. Plaintiffs' Exhibit 81A(1982) at Tab 16. Inmate Wesby urinated on himself while chained. Plaintiffs' Exhibit 81B(1982) at Tab 112. Inmate Kellams was chained to his bed for nineteen hours on May 28, 1980. During this time, Mr. Kellams urinated on himself. He was also chained to his bed for twenty-four hours on June 4, 1980. In between these two incidents, on June 2, 1980, Mr. Kellams tried to hang himself. Plaintiffs' Exhibit 81A(1982) at Tabs 26, 27, 29, 32, 33 and 34.

On April 12, 1981, inmates Emory and Waterman were chained to their beds shortly after attempting to commit suicide. Plaintiffs' Exhibit 81B(1982) at Tabs 82, 83, 85 and 87. Dr. Perry, the staff psychologist, testified that he had been aware that Waterman was not taking the medications that had been prescribed for him while he was at the Westville Corrections Center psychiatric unit. Dr. Perry had personally discontinued Mr. Waterman's medications shortly before the suicide attempt. Tr. 20-147; Plaintiffs' Exhibit 62(1982). The use of mechanical restraints was a common response to suicide attempts by prisoners, even in cases where prescriptions for anti-psychotic medications had been allowed to lapse by the Reformatory's own mental health staff.

The degree of medical supervision of shackled inmates is illustrated by the case of inmate McCombs. He was restrained with handcuffs in the MRU. The infirmary was called by the MRU staff because McCombs was banging his head. Forty-five minutes later, the log book shows that the infirmary was called again because no medical technician had come from the infirmary to observe McCombs. According to this note, the infirmary responded: "No worry on McCombs. They'd get here soon enough." Plaintiffs' Exhibit 81C(1982) at Tab 151.

On December 5, 1980 at 1:00 p.m., a note appeared in the MRU log book that is indicative of the level of administrative concern at the Reformatory about the

process of chaining prisoners. The note advises that assistant superintendent Miller had informed the MRU staff that the superintendent, Mr. Owens, was to be notified if any inmate was both chained and nude. The entry went on to emphasize that if the inmate was chained wearing clothes, it was not necessary to call the superintendent. This entry was official sanction of the practice of chaining prisoners to their beds without any clothing. It further suggests an attitude that anything less than restraint by chaining while an inmate was nude was not worthy of the attention of the superintendent. Plaintiffs' Exhibit 81B(1982) at Tab 61; Plaintiffs' Exhibit 46(1982).

In order to understand the full impact of the use of mechanical restraints in the MRU, it is important to understand what the MRU itself was like. It was well described by two of the expert witnesses. Joseph Cannon, an expert witness retained by the United States in the field of corrections, said:

> [MRU] condition-wise, as far as lack of cleanliness, and lack of sanitation, this was the extreme negative experience on the tour.... [T]he general impression of this, interior of this building, was just very depressing and very discouraging.
>
> A couple of — or three of the cells were vacant. I went into the cells, spent some time in the cells. There was a definite stench and foul odor in the cells. There was a window at the back of the cell up high that was barred and screened and smeared. You could just barely see daylight through it. Very depressing. Very bad atmosphere.... It should be declared uninhabitable as far as humans are concerned.

Tr. 17-148 through 17-150.

Dr. Frank Rundle also described his reactions to the MRU.

> The MRU unit should absolutely not be used, not only for persons with serious mental illness but in my opinion, for anyone.

Tr. 18-199.

> I think there are horrible adverse effects on anyone housed in that unit.... I have seen many so-called maximum security or isolation or similar kinds of units, and it's certainly one of the dreariest and dingiest and oppressive places I have been, just physically. The atmosphere which seems to be there is also, I think, one of the most malignant I have encountered in the visits that I made. And I just don't think that can be ameliorated if it continues.

Tr. 18-122.

Dr. Rundle testified that for many prisoners, the experience of being confined to the MRU would lead to increasing resentment and would ultimately explode into rage and aimless destruction. Tr. 18-122 through 18-123. According to Dr. Rundle: "My recommendation is that [the MRU] should be closed." Tr. 18-125.

Thus, the factual picture painted by the evidence of the use of mechanical restraints properly conjures up images of the medieval dungeon. This revolting and archaic image is complete in its finest details, including prisoners chained spread-eagle to bare steel beds, not permitted the smallest dignity of being allowed up to go to the bathroom or to eat at decent intervals.

The expert witnesses were equally opinionated in their unwillingness to tolerate this treatment of other human beings. Joseph Cannon responded thus:

> I believe the treatment of these people relative to mechanical restraints is unnecessary. That's probably the worst thing about it. It's unnecessary. And certainly, in my opinion, is unhumane, degrading, dehumanizing, and whatever adjectives you want to lay on it. But the worst of it is, it's unnecessary in my opinion, from my experience....

Tr. 17-150 through 17-151.

Mr. Cannon was familiar with the other maximum security institution in Indiana, the Indiana State Prison in

Michigan City. He testified that mechanical restraints were not used in the same fashion at the Indiana State Prison. Tr. 17-153. In fact, in the twenty-seven years he has spent in the field of corrections, Mr. Cannon had never seen a person restrained by being chained spread-eagle to a bed. Tr. 17-167.

Dr. Rundle testified that this use of mechanical restraints was totally improper, unacceptable treatment of anyone with or without a mental disorder. Tr. 18-115. According to Dr. Rundle:

> I think it is cruel, I think it's inhumane.... It is not only, I think harmful to the inmates, but it is aggravating the problem of the prison administration and the prison staff.

Tr. 18-119.

Dr. Rundle had also inspected the Indiana State Prison and saw no indication of a similar use of mechanical restraints there. Tr. 18-120. Dr. Rundle has visited many prisons and jails in seventeen different states, and he has never seen an institution where restraints have been used in this manner. Tr. 18-118.

Even the petitioners' expert witness in psychiatry, Dr. Ronald Hull, testified that the state should eliminate the use of metal restraints for psychiatric patients. Tr. 19-82. The petitioners' expert witness in corrections, Donald Hutto, said in his experience such hard metal, four-way restraints, were used very rarely and that they should be used "very sparingly and that they should not be used if there is any other conceivable alternative." Tr. 20-72; Tr. 20-55.

It was this factual record that led the district court to conclude:

> [I] find these four-way restraints have been applied up there without the type of supervision that I believe to be appropriate. I believe from the evidence that it is unnecessary, because it isn't done anyplace in the United States. I believe, therefore, that it's cruel and

> inhumane and in violation of the Eighth Amendment, and therefore, I here and now restrain and enjoin them preliminarily.

Tr. 23-33.

In later making the injunction permanent, the district court observed that a lack of qualified medical supervision and an anti-medical bias on the part of some of the mental health staff

> resulted in psychotic inmates being deprived of medication and chained to a bed with all four limbs completely restrained in spread-eagle fashion as "treatment" when they act out their delusions. This latter practice, which has developed since 1978, was condemned by experts called by both sides and characterized as "medieval," and without parallel in any prison in the United States.

Appendix to Petition for Writ of Certiorari at A-67. The district court later characterized this as an "intolerable barbaric practice." Appendix to Petition for Writ of Certiorari at A-29.

The court of appeals was equally offended by this archaic practice and rejected the petitioners' position that the use of mechanical restraints was necessary for effective prison management.

> The court was clearly within its right to enjoin such "outmoded and inhuman" practices. *Landman v. Royster*, 333 F.Supp. 621, 648 (E.D.Va. 1971). The image of individuals shackled naked for days to a metal bed frame is a sad reminder of the "soul-chilling inhumanity of conditions in America's prisons." *Rhodes v. Chapman*, 452 U.S. 337, 354 (1981). While some form of temporary restraint may be necessary against those who pose a threat to themselves and others, Pendleton's methods are "too close to the rack and the screw to permit of constitutional differentiation." *Rochin v. California*, 342 U.S. 165, 172 (1952).

Appendix to Petition for Writ of Certiorari at A-7.

There are several reasons why this Court should not review the mechanical restraints injunction. First, the decision to enjoin the use of mechanical restraints, subject only to tightly controlled exceptions, is consistent with prior decisions of this Court. "Today the Eighth Amendment prohibits punishments which, although not physically barbarous, 'involve the unnecessary and wanton infliction of pain' ...." *Rhodes v. Chapman*, 452 U.S. 337, 346 (1981) (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976)). Especially in light of the testimony and the district court's findings that the use of mechanical restraints is unnecessary and not used in other maximum security prisons, their use constitutes the infliction of pain "totally without penological justification." *Gregg*, 428 U.S. at 183. Indeed, mechanical restraint methods at the Reformatory are so unconscionable as to be physically barbarous. It will serve no purpose for this Court to review a decision that is so well grounded in established Eighth Amendment law.

This Court's recent decision in *Whitley v. Albers*, 106 S.Ct. 1078 (1986) is not to the contrary. There, the Court held, "It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause...." *Id.* at 1084. In judging the use of force in a prison, the Court identified several factors. These include the need for using force measured against the amount of force, the extent of injury, the extent of the threat to staff and inmates, and efforts to temper the use of force. "From such considerations inferences may be drawn as to whether the use of force could plausibly have been thought necessary, or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that this occur." 106 S.Ct. at 1085. The use of mechanical restraints evinces precisely this degree of wantonness. They have been consistently applied when they were not needed, and have been used in response to mere aggravating behavior by prisoners, or worse, in

response to activity that was the product of mental illness. Serious injury has resulted. The Court of Appeals found that the "efforts to explore alternatives seem lacking." Appendix to Petition for Writ of Certiorari at A-9. Finally, unlike *Whitley*, this case does not involve a possible assessment of damages as a result of actions taken on one occasion to quell a widespread outbreak of prison violence and hostage taking. Rather, it involves the considered judgment of the district court of a long-standing record of abuse on many occasions and a remedy calculated to prevent similar recurrences in the future.

Second, the Court of Appeals' affirmance of the mechanical restraints injunction is consistent with other cases in the country that uniformly reflect a need for judicial intervention when penological practices fall to the level of chaining prisoners in their cells. *See Stewart v. Rhodes*, 473 F.Supp. 1185 (S.D.Oh. 1979), *appeal dismissed*, 661 F.2d 934 (6th Cir. 1981); *Owens-el v. Robinson*, 442 F.Supp. 1368 (W.D.Pa. 1978), *modified*, 457 F.Supp. 984; *Campbell v. McGruder*, 416 F.Supp. 106 (D.D.C. 1975); *Landman v. Royster*, 333 F.Supp. 621 (E.D.Va. 1971). Because there is no split in lower court authority on this issue, review by this Court is inappropriate.

Finally, mechanical restraint usage at the Reformatory is unique to that institution in both methodology and extent of use. While the issue presents an important question of federal law to prisoners at the Reformatory, there is no need for Supreme Court review in order to settle a point of law as to widespread practices. Because the practice is unique to Indiana, it is sufficient that there has been thorough consideration by the district court and a searching review by the court of appeals.

### 3. The Decision Of The Seventh Circuit Is Comprehensive In Addressing All Of The Essential Issues In This Case.

The opinion of the seventh circuit was appropriately focused on the issues that support the specifically detailed judgment of the district court. A key theme of this decision was the overwhelming need for "the Indiana prison system [to eliminate] the severe overcrowding at Pendleton and the pernicious evils that accompany it." Appendix to Petition for Writ of Certiorari at A-6. The opinion below deals with many of the manifestations of those "pernicious evils" explicitly, but more importantly makes its intention clear that overcrowding, wherever demonstrable, at the Reformatory requires the broad remedies fashioned by the district court. *Id.* at A-6 through A-10. The judgment of the district court was affirmed below "insofar as it pertains to overcrowding and double celling, mechanical restraints, [and] medical care." *Id.* at A-15 through A-16. Such a specific finding cannot be characterized as a failure to address the issues.

The petitioners presented this position directly to the court of appeals, and quite clearly the opinion of the court is explicit in upholding the district court judgment on these issues. An effort by petitioners to characterize the holding as incomplete does not of itself merit review by this Court.

## CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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